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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

Case No. 72

CITY OF PLANTATION, a municipal corporation of Broward County, Florida, *Appellant*,

v.

UTILITIES OPERATING CO., INC., a Florida corporation, *Appellee*.

APPELLEE'S MOTION TO DISMISS AND BRIEF IN SUPPORT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

Case No. 1096

CITY OF PLANTATION, a municipal corporation of Broward County, Florida, *Appellant*,

v.

UTILITIES OPERATING CO., INC., a Florida corporation, *Appellee*.

APPELLEE'S MOTION TO DISMISS

Comes now the Appellee pursuant to Rule 16 of the Revised Rules of this Court and moves to dismiss this appeal from the decision of the highest court of the State of Florida on the ground that it presents only a question of local law and, therefore, does not present a substantial federal question, showing the following:

1. The appellant commenced this action by seeking a declaratory judgment in the courts of Florida that the Water and Sewer System Regulatory Law of Flor-

ida, Chapter 367, 1959 Florida Statutes, is in contravention of the contract clause of the United States Constitution, Article 1, Section 10. The trial court and the Supreme Court of Florida denied the relief requested, ruling that the challenged statute was not unconstitutional as contended by appellant.

2. In 1953 when appellant was chartered as a municipality in Florida it had authority to regulate the rates charged consumers by water and sewer systems. In accordance with this authority it adopted a franchise ordinance authorizing appellee to construct, maintain and operate water and sewerage systems in the municipality for a period of 30 years. The ordinance established maximum initial rates for appellee and reserved the right to regulate future rates.

3. In 1959 the Florida Legislature enacted the Water and Sewer System Regulatory Law which transferred rate regulatory control of water and sewer systems from municipalities to the state Railroad and Public Utilities Commission. Since 1885, Article XVI, Section 30 of the Constitution of Florida has empowered the state legislature to regulate rates and services of public utilities. The appellant nevertheless argues that the 1959 law impaired the obligations of the franchise contract it had with appellee as a result of the franchise ordinance previously adopted.

4. This case involves simply an intramural transfer of authority to regulate the rates charged by appellee in its water and sewer services—a transfer from the appellant municipality to the state Railroad and Public Utilities Commission. The municipality is merely an arm of the state which is fully subject to the will of its sovereign and it cannot complain of this transfer

of regulatory powers. The contract clause of Article I, Section 10 does not apply to the relationships between the municipality and the state. Moreover, the state had the reserve power to make this transfer of regulatory powers and thereby alter the franchise contract appellant had with appellee, at any time it chose to do so. The appellant could not make a contract with appellee which would have the effect of foreclosing the reserved power of the state to provide for the regulation of rates of water and sewer systems. These matters raised no issues under the United States Constitution; they are merely issues of local law and the highest court of the state has disposed of them adversely to appellant. *Pawhuska* v. *Pawhuska Oil & Gas Co.*, 250 U.S. 394, 397 (1919). Accordingly, no substantial federal question has been presented by appellant.

WHEREFORE, appellee Utilities Operating Company, Inc. respectfully prays that the appeal be dismissed and that such other and further relief be granted as may to the Court seem proper.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

Case No. 1096

CITY OF PLANTATION, a municipal corporation of Broward County, Florida, *Appellant*,

v.

UTILITIES OPERATING CO., INC., a Florida corporation, *Appellee*.

BRIEF IN SUPPORT OF APPELLEE'S MOTION TO DISMISS

Nature of Proceedings

This is an appeal from a decision of the highest court of the State of Florida in which, the appellant contends, there is drawn in question the validity of a statute of the state on the ground of its being repugnant to the Constitution of the United States (See

28 U.S.C. § 1257(2)). The statute under challenge is the Water and Sewer System Regulatory Law of Florida, set forth as Chapter 367 of the 1959 Florida Statutes, and it allegedly is contrary to the contract clause of Article I, Section 10 of the United States Constitution by effectively transferring from the appellant municipality to the Florida Railroad and Public Utilities Commission regulatory control of water systems, including the system operated by appellee.

The Florida trial court and the Supreme Court of Florida held the statute does not contravene Article I, Section 10 of the Constitution. The municipality filed notice of appeal to this Court and, on May 9, 1964, the jurisdictional statement of appellant was filed herein.

Statement of Case

In 1954 the governing body of the appellant, a municipal corporation in Florida, adopted a franchise ordinance authorizing appellee to construct, maintain and operate water and sewerage systems in the municipality for a period of 30 years. The ordinance established maximum initial rates for appellee's service to the public and reserved to the municipality the right to regulate future rates.

The charter granted appellant by the Florida Legislature in 1953 empowered it to regulate water and sewer rates. The general laws of the state further authorized the city to "prescribe by ordinance maximum rates and charges for the supply of water * * * to such city * * * and the inhabitants, such charges to be just and reasonable."[1]

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[1] § 167.57, Florida Statutes.

Since 1885 the Constitution of Florida has provided in Article XVI, Section 30, that:

> "The legislature is invested with full power to pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges by persons and corporations engaged as common carriers in transporting persons and property, or performing other services of a public nature; and shall provide for enforcing such laws by adequate penalties or forfeitures."

Pursuant to this provision of the Constitution the Florida Legislature enacted the Water and Sewer System Regulatory Law in 1959. This law, the text of which is reproduced in appellant's jurisdictional statement,[2] vested in the Florida Railroad and Public Utilities Commission regulatory control of the rates and services of water companies.

The Supreme Court of Florida held, in the appellant's appeal from the judgment of the trial court, that the 1959 law superseded the prior laws empowering appellant to regulate water companies and had the effect of altering the franchise agreement between appellant and appellee.[3] The Court said:

> "Article XVI, Section 30, Florida Constitution, vests in the Legislature full power to regulate charges and services performed by public utilities. Until the Legislature undertakes to assert this power, a franchise arrangement, such as the one before us, may properly provide for rate regulation by a municipality. Such an agreement, however, is presumed to have been made with full knowledge of the inherent reserved power of the

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[2] Jurisdictional Statement, Appendix p. 7, et seq.

[3] Loc. cit., Appendix pp. 4-6.

> State to alter the contract regarding rates at such time as the Legislature deems it appropriate to assert the power under the Constitution. It also follows that when the parties enter into such a contract they do so with the full realization that the contractual provisions are ineffective to preclude subsequent legislative action in the exercise of the State's police power.'"[4]

It is the contention of the Appellant that the exercise of this power by the State of Florida was an impairment of the obligations of the franchise agreement it had with the water company (appellee). It is further argued that this impairment is prohibited by Article I, Section 10 of the United States Constitution.

No Federal Question Is Presented By This Appeal

The only question on this appeal is whether the contract clause of the United States Constitution is applicable to the relationships between the State and its subdivision, a municipality in the absence of any state law or other arrangement making the clause applicable. This is not a case in which the utility or the municipality is attempting to enforce a franchise agreement as between the parties where there has been no state action pursuant to reserved powers of the state interfering with the municipality's rights under the agreement. See, *Home Telephone and Telegraph Co.* v. *Los Angeles,* 211 U.S. 265 (1908); *Detroit United Railway* v. *Michigan,* 242 U.S. 238 (1916). Here the city would usurp or take over the constitutionally reserved power of its sovereign, the State of Florida, to regulate water and sewer rates by interposing a franchise agreement of its own making.

[4] Loc. Cit., Appendix p. 6.

The municipality is simply an arm of the State and its rights and powers may be altered at the will of the State. *Trenton* v. *New Jersey*, 262 U.S. 182 (1923); *Newark* v. *New Jersey*, 262 U.S. 192 (1923); *Williams* v. *Baltimore*, 289 U.S. 36 (1933). In the *Trenton* case, fee charges by the state against a municipality for diverting water from the Delaware River were upheld against constitutional objections based upon the rights of the private water company which had been taken over by the city. Differentiating the constitutional protection afforded a private water company from the rights of a municipality against its sovereign, this Court said:

> "The relations existing between the state and the water company were not the same as those between the state and the city. The company was organized and carried on its business for pecuniary profit. Its rights and property were privately owned and therefore safeguarded by the constitutional provisions here sought to be invoked by the city against the legislation of the state. * * *
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> * * *
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> "In the absence of state constitutional provisions safeguarding it to them, municipalities have no inherent right of self government which is beyond the legislative control of the state. A municipality is merely a department of the state, and the state may withhold, *grant or withdraw powers and privileges, as it sees fit.* However great or small its sphere of action, it remains the creature of the state, exercising and holding powers and privileges *subject to the sovereign will.*" 262 U.S. at 185-187. (Emphasis added).

It is this principle which appellant ignores in this case. It relies upon a number of cases holding that a state may authorize a municipality to enter into fran-

chise contracts which are enforceable against attempts of either the municipality or the franchised operator to change the service rates specified in the contracts.[5] In none of these cases did the state step in and withdraw the municipalities' power to enforce the contracts as the State of Florida did in this instance.

Whenever the state has, pursuant to authority of its constitution, intervened to transfer the power of a municipality to regulate public utility rates to a state commission, this Court has upheld the intramural transfer as against the objection of the municipality that it impaired the obligations of contracts entered into before the transfer of powers became effective. *Pawhuska* v. *Pawhuska Oil & Gas Co.*, 250 U.S. 394 (1919). Indeed, even the private company operating the public utility pursuant to a franchise contract may not raise the constitutional objection where the state has altered municipal powers in accordance with the state constitution. *Puget Sound Traction, L. & P. Co.* v. *Reynolds*, 244 U.S. 574 (1917).

In the last cited case the street railway operator, relying upon a franchise agreement with the municipality, objected to regulation by the state Public Service Commission under a law enacted by the state after the grant of the franchise by the municipality. Holding there was no impairment of contract obligations within the meaning of Article I, Section 10 of the United States Constitution, this Court said:

> "Assuming (what is not clear) that the provision in the franchise ordinances respecting the rates

[5] *St. Cloud Public Service Co.* v. *St. Cloud*, 265 U.S. 352 (1924); *Detroit United Railway* v. *Michigan*, 242 U.S. 238 (1916); *Georgia Ry. & Power Co.* v. *Decatur*, 262 U.S. 432 (1923), and others cited on page 8 of the Jurisdictional Statement.

> of fare and the transfer privileges are contractual in form, still it is well settled that a municipality cannot by a contract of this nature, foreclose the exercise of the police power of the state unless clearly authorized to do so by the supreme legislative power. The Constitution of Washington, Art. 12, § 18, requires the legislature to pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight." 244 U.S. at 578-79.

In the *Pawhuska* case, supra, the municipality challenged an order of the state Corporation Commission fixing natural gas rates with the contention that a contract it entered into with the gas company in 1909 was unconstitutionally impaired by a 1913 state law giving the state Corporation Commission power over the rates of public utilities. This Court dismissed the writ of error on the ground that no constitutional issue was raised, saying:

> "It is not contended—nor could it well be—that any private right of the city was infringed, but only that a power to regulate in the public interest, theretofore confided to it, was taken away and lodged in another agency of the state—one created by the state constitution. Thus the whole controversy is as to which of two existing agencies or arms of the state government is authorized for the time being to exercise in the public interest a particular power, obviously governmental, subject to which the franchise confessedly was granted. In this no question under the contract clause of the constitution of the United States is involved, but *only a question of local law, the decision of which by the supreme court of the state is final.*" 250 U.S. at 397 (Emphasis added).

Emphasizing the power of the state to control the municipality the Court thereafter quoted from *New*

Orleans v. *New Orleans Waterworks Co.*, 142 U.S. 79, 91 (1891) as follows:

> "* * * 'The municipality, being a mere agent of the state, stands in its governmental or public character in no contract relation with its sovereign, * * *. In this case the city has no more right to claim an immunity for its contract with the waterworks company than it would have had if such contract had been made directly with the state. The state, having authorised such contract, might revoke or modify it at its pleasure." 250 U.S. at 399.

In this case the contract between appellant and appellee for a water and sewer service was subject to change by the State of Florida. It was changed by transferring regulatory and rate control powers from the municipality—a mere arm of the state—to the Railroad and Public Utilities Commission. The city may not, under these circumstances, raise any question of impairment of contract under Article I, Section 10 of the United States Constitution. Accordingly, there is no recognizable federal question involved in this appeal.

Conclusion

The Constitution of the State of Florida reserved to the state the power to regulate rates of public utilities. Although at one time the state carried out this power through appellant as a municipality, it made an intramural change by transferring authority from the municipality to the state Railroad and Public Utilities Commission. The municipality, as an arm of the state, is bound by this transfer of powers. Moreover, the franchise agreement it had with appellee was made

subject to the constitutional authority of the state to transfer rate powers away from the municipality. These are questions of local law and do not involve Article I, Section 10 of the Constitution of the United States. The appeal should be dismissed for failure to raise a substantial federal question.

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